



CITY OF ROANOKE OFFICE OF THE CITY MANAGER

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September 21, 2009

Honorable David A. Bowers, Mayor
Honorable Sherman P. Lea, Vice Mayor
Honorable M. Rupert Cutler, Council Member
Honorable Gwendolyn W. Mason, Council Member
Honorable Anita J. Price, Council Member
Honorable Court G. Rosen, Council Member
Honorable David B. Trinkle, Council Member

Dear Mayor Bowers and Members of City Council:

Subject: Proposed Changes to Virginia's
Stormwater Management
Regulations

Background:

On June 22, 2009, the Virginia Soil and Water Conservation Board published proposed regulations amending the Virginia Stormwater Management Program (VSMP) Permit Regulations to address water quality and quantity and local stormwater management program criteria, including implementation of a statewide permit fee on land development activities. The state conducted a series of public hearings and accepted written comments on the proposed amendments to the VSMP. By letter dated August 21, 2009, City staff submitted comments recommending changes to the proposed amendments and requested that the state retain the existing VSMP regulations in areas outside of the Chesapeake Bay watershed. On September 2, 2009, the Soil and Water Conservation Board published the agenda for its September 17, 2009, meeting that includes a discussion of additional changes to the proposed VSMP to address public comments, such as those submitted by City staff, to the proposed regulations and providing an opportunity for public comment on the proposed revisions.

Considerations:

On October 1, 2007 the City Council adopted a new Chapter 11.4, Stormwater Management, of the Code of the City to address quantity of runoff while adding new requirements for water quality for stormwater discharges as required by State regulations (VSMP) and to protect and improve the water quality in the Roanoke River and its tributaries. This ordinance was prepared in collaboration with a stakeholder committee that included the Roanoke Regional Homebuilders Association and an identical ordinance was adopted by Roanoke County. The proposed amended VSMP includes provisions that staff believes would be unnecessary and counterproductive to the goals of improved water quality; that would inhibit the redevelopment of urban areas; and that would create a system of statewide permit fees that would be insufficient to fund the operation of the local stormwater management program. A detailed letter dated September 16, 2009, explaining these concerns and repeating the request to maintain the current VSMP regulations in areas outside of the Chesapeake Bay watershed is attached. These additional comments were presented to the Soil and Water Conservation Board at its September 17, 2009 meeting. If City Council adopts a resolution supporting the expression of these concerns and recommendations, such resolution will be forwarded to the Board for its consideration prior to its scheduled action on the proposed regulations on October 6, 2009.

Recommended Action:

Adopt the attached resolution endorsing the comments contained in the attached letter dated September 16, 2009, regarding proposed changes to Virginia's Stormwater Management Program.

Respectfully submitted,



Darlene L. Burcham
City Manager

Attachment

c: Stephanie M. Moon, City Clerk
William M. Hackworth, City Attorney
Ann H. Shawver, Director of Finance
R. Brian Townsend, Assistant City Manager for Community Development
Robert K. Bengtson, Director of Public Works
Thomas N. Carr, III, Director of Planning, Building and Development

September 16, 2009

Mr. Joseph Maroon
Director
Virginia Department of Conservation and Recreation
203 Governor's Street
Richmond, Virginia 23219

Re: Proposed Amendments to Virginia's Stormwater Management Regulations

Dear Mr. Maroon:

The City of Roanoke appreciates the Department of Conservation and Recreation's attention to the comments that the City made on the proposed amendments to the Virginia's Stormwater Management Regulations [4 VAC 50 – 60]. The latest proposal to be discussed at the September 17, 2007 Soil and Water Conservation Board meeting is responsive to several of the City's comments, but there are still several areas of the proposed amendments that we believe are inappropriate. Our continued concerns are listed in the bullet points below and explained in greater detail in the paragraphs following the bold headers.

- The proposed changes still do not coordinate with other water quality requirements being placed on MS4 communities.
- The continued imposition of a 20% reduction in phosphorous on sites of an acre or larger will inhibit redevelopment of urban areas.
- The proposed fee system with its required 28% kickback to the state and increased MS4 fees is insufficient to fund a local stormwater program.

The proposed changes do not coordinate with other MS4 requirements.

Roanoke is an MS4 community, and the City believes the proposed regulation is irrationally concentrating on reduction of phosphorus loadings. The proposal continues to disregard the MS4's obligation to address TMDL priority pollutants under Section I of their permit, as well as the MS4's requirement to meet the other minimum control measures under Section II of the permit. Furthermore, in Roanoke the TMDL priority pollutants are organic or biological agents, and due to their inherent chemical and physical characteristics, are subject to much different environmental fate and transport processes than inorganic nutrients such as phosphorus, which remains the focus of the proposed regulations.

The regulations will inhibit redevelopment.

Roanoke is a developed community with very limited opportunity for green field development. Both economic and residential growth largely results from the redevelopment of existing, often highly impervious sites that are frequently brownfields. The proposal to require the use of various Best Management Practices (BMPs) to reduce

phosphorus, while completely ignoring significant TMDL pollutants, (sediment, bacteria and soon PCBs) is at best an inefficient approach to water quality. Increasing the required phosphorus discharge reduction from 10% to 20% for sites of an acre or greater, and the method of calculating predevelopment and conditions (conditions at the time of an application), will be a great and potentially devastating disincentive to revitalization of our urban core. We continue to recommend retention of the current 10% reduction standard. The state's own analysis indicates that the cost of achieving the additional nutrient reduction will be very high, and as such would render redevelopment projects infeasible. The physical limitations of higher density urbanized sites also render the technical application of these regulations impractical. These changes are contrary to recently adopted legislation (House Bill 3202) whose goal is higher density, compact, sustainable development as opposed to the pattern of suburban sprawl that has been at the root of declining water quality.

For localities such as the City of Roanoke, redevelopment of sites that came into existence long before stormwater regulations existed is a major, perhaps the major, focus. The City has expended particularly great efforts to promote the redevelopment in core areas of the City, and both the quality and quantity provisions of the proposed rule stand to adversely impact the redevelopment of such properties. Some core properties are also brownfields, which by definition are already impaired, and restoring them to productive reuse is a critical aspect of water quality improvement, infrastructure and tax base preservation, and efficient land use. Finding qualified buyers and developers for these sites is already difficult enough, and there should be no additional burdens placed on restoring them to safe and productive reuse. By redeveloping sites localities are better able to abate or stabilize contaminated lands, while eliminating neighborhood blight, and suburban sprawl, all of which adversely impact water quality.

For these reasons, provisions should be made in the proposed regulations that would provide credits for the positive impacts of redevelopment. Additionally, there should be a site specific review of stormwater technical criteria for previously developed sites that would allow for innovative rather than prescriptive BMP design and implementation. These provisions are needed to ensure that both the environmental clean-up and stormwater pollution prevention goals of these projects are addressed in a comprehensive and maximally beneficial manner.

We also continue to recommend modifications to section 4VAC50-60-10 Definitions, of the proposed amendments. The City has concerns over the revised definition of predevelopment, which refers to conditions that exist at the time that plans for the land development of a tract of land are submitted to the plan approval authority. Currently, the City allows a 5 year window for redevelopment sites. As an example: if a site originally contained a building and was 60 percent impervious and the building was demolished and removed 4 years before the submission of the site plan, changing the impervious percentage to 40 percent, then the pre-development condition used in the calculations may be based on the previous 60 percent impervious area. The reason for this allowance was that we did not want to penalize a property owner for demolishing an

unsafe/unsightly structure and cleaning up a property. The revised definition would eliminate this option in our design manual and will be a disincentive for redevelopment.

The proposed fee system is flawed.

The cost of administering these regulations will be high, yet there is no full cost recovery mechanism provided to local government being tasked with implementation. In fact, the regulations require the sharing of 28 percent of fees collected at the local level with the state. Requirements in the current regulations that are not being enforced by DCR (i.e. plan review, permit issuance, etc) are now being assigned to the localities along with a fee system that is inadequate, arbitrary and requires the City to become a collection agent for the state. Our calculations indicate that the VSMP requirements cannot be managed in our community at full cost recovery with the fee limits and reverse revenue sharing required by the state.

The fee system also double charges some properties. It is understood that the proposed fee schedule [4VAC50-60-820] is written such that new lots of a common plan of development within developments of greater than 1 acre, but less than 5 acres, will each have to pay \$2,700.00 to obtain a VSMP permit, if the lots are owned/developed by someone other than the developer. This is excessive. Essentially the same property is being permitted twice, once under the permit for the common plan of development, and a second time under the development of the individual lot. An overall stormwater management plan is required for the common plan of development and an erosion and sediment control plan is required, both to protect downstream waters. What truly is being accomplished by permitting individual lots that are part of a common development when stormwater management parameters have already been applied to the individual lot?

The lack of coordination extends to the area of prescribed fees as well. Section 4VAC50-60-700 is unclear to the City in regards to how the fee can be used. This section states "Sections 10.1-603.4 and 10.1-605 of the Code of Virginia authorize the establishment of a statewide fee schedule for land disturbing activities and for municipal storm sewer systems," yet later in 4VAC50-60-780(B) – Deposit and use of fees - the proposed regulation states that where these fees are collected by a qualifying local entity, they "...shall be used solely to carry out the local program's responsibilities pursuant to Part II and Part III A of this chapter." These sections are contradictory in that the latter rules out the use of associated revenues for any use other than for the implementation and operations of the local program directed at ensuring compliance with the technical criteria related to land disturbing activities.

The proposed fee use restriction ignores the need for funding to support the remaining efforts required of localities for compliance with the other aspects of their MS4 permits; i.e. illicit discharge detection and elimination, public education and involvement, and the permittee's own development and use of stormwater BMPs. As such, this provision leaves a significant portion of the locality's relatively recent (July 2008) compliance obligation without a funding source, but still needing considerable staffing and other resources in order to be both successful and compliant. If the intent of

the proposed new regulation is to provide a revenue source to offset the cost of implementation of the stormwater program, then revenue needs to be provided for administratively, by incorporating a comprehensive fee structure into the new regulations.

In short, so long as localities agree to use revenues collected from their stormwater management programs, solely for the ongoing operation of those same programs, the state should not mandate how localities use those same revenues. Such restrictions ignore the obvious resource needs of the other very important aspects of locally administering a comprehensive stormwater management program. The proposed 566% increase in our MS4 Permit Fee (from \$600 to \$4,000) also is excessive. Especially when paired with the above noted restrictions on our use of fees collected from our own administration of the land disturbance provisions. If a permit fee increase of this magnitude is required, it should be either phased in, or have no restrictions on what revenue stream the funds come from, or both.

The City of Roanoke appreciates DCR's effort to clarify aspects of the stormwater quantity regulations, and to eliminate the application of Chesapeake Bay watershed standards outside of that area. However, we respectfully continue to encourage the Department to retain the stormwater quality regulations that currently apply to areas outside of the Chesapeake Bay Watershed. We also urge the state to consider its approach to stormwater management more holistically, and to develop regulations that coordinate all of the requirements that are applicable to MS4 communities. The proposed regulation does not provide for a comprehensive stormwater management program.

Sincerely,

Tom Carr
Director of Planning, Building and Development

pc: Darlene Burcham, City Manager
Brian Townsend, Assistant City Manager
James Grigsby, Assistant City Manager
Bob Bengtson, Director of Public Works
Chris Chittum, Planning Administrator
Danielle Bishop, Development Review Coordinator
Christopher Blakeman, Environmental Administrator
Virginia Soil and Water Conservation Board